

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**No. 18-cv-0342 WJ/SMV  
16-cr-4742 WJ/SMV**

**JUAN JOSE MALDONADO-ARCE,**

**Defendant.**

**ORDER DIRECTING THE UNITED STATES  
TO SUPPLEMENT ITS ANSWER**

THIS MATTER is before the Court on review of the United States' Response to Defendant/Petitioner's Amended [sic] Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255 [CR Doc. 31], filed on June 6, 2018. The Court will order the United States to supplement its answer no later than July 9, 2018. Defendant may reply to both the original answer [Doc. 31] and supplemental answer in one, single reply, which will be due within 14 days of service of the amended answer.

In his § 2255 motion, Defendant alleges that his counsel provided ineffective assistance. Among other things, Defendant asserts that his "attorney Leon Encinias stated he would file an appeal to help [Defendant] get his time reduced and yet attorney has failed to provide assistance to [Defendant] in any form." [Doc. 24] at 3. The United States argues that Mr. Encinias could not have been constitutionally ineffective for failing to file an appeal because an appeal would have been futile. [Doc. 31] at 10–11. The United States' answer, however, fails to address the governing standard, which is described in *United States v. Garrett*, 402 F.3d 1262, 1265–67 (10th

Cir. 2005). Therefore, the Court will order the United States to supplement its answer to address the standards in *Garrett*.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the United States supplement its answer to Defendant's § 2255 motion no later than **July 9, 2018**.

**IT IS FURTHER ORDERED** that Defendant may reply to both the original answer [Doc. 31] and supplemental answer in one, single reply, which is due **within 14 days** of service of the amended answer.

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**